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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/706,642	11/12/2003	Kazue Tanaka	17134	7885
23389	7590	07/12/2007	EXAMINER	
SCULLY SCOTT MURPHY & PRESSER, PC			JAWORSKI, FRANCIS J	
400 GARDEN CITY PLAZA			ART UNIT	PAPER NUMBER
SUITE 300			3768	
GARDEN CITY, NY 11530				
MAIL DATE		DELIVERY MODE		
07/12/2007		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/706,642	TANAKA
	<b>Examiner</b>	<b>Art Unit</b>
	Jaworski Francis J.	3768

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 13 April 2007.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-34 is/are pending in the application.  
 4a) Of the above claim(s) 1 and 6-34 is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 2-5 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1.) Certified copies of the priority documents have been received.  
 2.) Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3.) Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ .                                    |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ .  | 6) <input type="checkbox"/> Other: _____ .                        |

**DETAILED ACTION**

***Specification***

The disclosure is objected to because of the following informalities:

The acronym DDS is not explained in association with elements 17 or 107 of respective Figs. 2 and 11 in the spec page 4 discussion. The examiner believes that this is a Direct Digital Synthesis circuit that converts the counter 103 output to a Sine wave frequency output.

Appropriate correction is required.

Claims 2 – 5 are present for examination in this case; remaining claims 1 and 6 – 34 stand withdrawn from consideration after election without traverse in the election response filed April 13, 2007.

***Claim Rejections - 35 USC § 102/103***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

- (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

- (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2 – 5 are rejected under 35 U.S.C. 102(a) as being anticipated by applicant's prior art Fig. 11, or in the alternative are rejected under 35 U.S.C. 103(a) as being unpatentable over applicant's prior art Fig. 11 and attendant specification discussion of this figure, further in view of Wiener et al US6678621.

With respect to anticipatory argument first, the Examiner is interpreting that inclusion of the analog voltage controlled oscillator 24 adapts the sweep which hunts for the initial resonance of the handpiece, which particular resonance must be exactly identified below a nominal limit provided in for example the handpiece coding of the device. In this fashion the initial resonance is more quickly identified so that the phase-locked loop tracking of resonance changes with tissue loading may occur. Therefore Fig. 2 as an exemplary embodiment of invention differs from Fig.11 in the presence of analog VCO 24 which changes the sweep speed as claimed in base claim 2. However, it is noted that the stopping of the sweep speed called for in step 107 described on page 8 of this application would represent a sweep speed change to zero from an initial value of step 103 as described in this application page 7 bottom. Otherwise the two figures both track the claimed features.

In the alternative, it would have been obvious in view of Wiener et al col. 5 lines 47 – 61 to modify the sweep rate in increments as the resonance frequency is approached in order to avoid instability of overshoot of the resonance point.

Any inquiry concerning this communication should be directed to Jaworski Francis J. at telephone number 571-272-4738.

FJJ:fjj 7-6-07



Francis Jaworski  
Primary Examiner